

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**

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**MOTION TO DISMISS BASED ON THE SELECTIVE NATURE OF THE  
PROSECUTION AND/OR FOR DISCOVERY ON THE SELECTIVE  
PROSECUTION CLAIM**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, and pursuant to the Equal Protection Clause of the Fifth Amendment to the United States Constitution, hereby respectfully requests that this Honorable Court dismiss this action based on the selective nature of the prosecution and/or grant discovery to allow further investigation of the selective prosecution claim. As grounds in support, Mr. Fariz states:

**I. Introduction**

On February 19, 2003, Mr. Fariz and seven other co-defendants were charged in a 50-count Indictment. (Doc. 1). On September 21, 2004, the grand jury returned a 53-count Superseding Indictment against Mr. Fariz and eight co-defendants. (Doc. 636). The allegations in the Superseding Indictment are all based on the Defendants' alleged support of the Palestinian Islamic Jihad (PIJ), in terms of finances, logistics, organization, and so forth. While the indictment details several violent attacks the PIJ is alleged to have carried out, it is undisputed that the Defendants did not take part in the planning or execution of the

referenced attacks. The allegations against Mr. Fariz in particular are based on alleged support for the PIJ in terms of fund-raising. *See, e.g., id.*, ¶¶ 43(283, 285, 286, 310, 316, 317, 318, 319, and 320).

As set forth below, Mr. Fariz demonstrates that other similarly situated individuals belonging to groups that are engaged in exactly the same type of activity he and his co-defendants allegedly engaged in on behalf of the PIJ, but have not been criminally prosecuted in actions containing material support to terrorist charges under 18 U.S.C. § 2339B. The instant prosecution is rooted in unconstitutional grounds and should be dismissed as a case of selective prosecution.

## **II. Standard for Selective Prosecution Claim and Statutory Basis for the Instant Prosecution**

According to the Supreme Court, “[a] selective prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *United States v. Armstrong*, 517 U.S. 456, 463 (1996); *United States v. Smith*, 231 F.3d 800, 807 (11<sup>th</sup> Cir. 2000). While prosecutorial discretion is generally given a broad construction by the courts, “the decision whether to prosecute may not be based on an ‘unjustifiable standard such as race, religion, or other arbitrary classification’” in violation of the equal protection guarantee of the Fifth Amendment. *Armstrong*, 517 U.S. at 464 (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)). To make out a successful selective prosecution claim, Mr. Fariz must show by “clear evidence” that the prosecutor’s decision or the policy in question has both “a

discriminatory effect and . . . was motivated by a discriminatory purpose.” *Id.* at 465. Selective prosecution claims are adjudicated according to ordinary equal protection standards. *Wayte v. United States*, 470 U.S. 598, 608-09 (1985).

To show discriminatory effect, Mr. Fariz must demonstrate that “similarly situated individuals of a different [classification] were not prosecuted.” *Id.* The Eleventh Circuit defines a

"similarly situated" person for selective prosecution purposes “as one who engaged in the same type of conduct, which means that the comparator committed the same basic crime in substantially the same manner as the defendant--so that any prosecution of that individual would have the same deterrence value and would be related in the same way to the Government's enforcement priorities and enforcement plan - and against whom the evidence was as strong or stronger than that against the defendant.”

*Smith*, 231 F.3d at 810. “[D]iscriminatory purpose’ ... implies that the decisionmaker ... selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Wayte*, 470 U.S. at 610 (internal citations omitted). Such a purpose may be demonstrated by circumstantial evidence. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977) (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”).

### **III. Argument**

#### **A. Discrimination Among Foreign Terrorist Organizations (FTOs)**

The Defendants in this case are all Muslims of Middle Eastern<sup>1</sup> descent who are alleged to have been members of the PIJ, a banned FTO. The most prominent feature of the charges in the indictment stems from the Defendants' alleged provision of material support to an FTO through fund raising or advocacy. The government has initiated criminal terrorism prosecutions against Muslim individuals of Middle Eastern descent allegedly belonging to groups designated as FTOs by the Department of State, solely on the basis of those individuals' otherwise legal fund raising or advocacy activities. A review of the current prosecutions of individuals charged in cases alleging violations of the material support statutes that involve advocacy activity in the United States reveals that those individuals so charged are Muslims of Middle Eastern origin involved with groups not actively engaged in attacks on the United States. *See United States v. Holy Land Foundation for Relief and Development*, 304 CR 240G (N.D. Tex. 2004) (Muslims of Palestinian origin charged with conspiracy to provide material support and multiple counts of providing material support to Hamas via operation of a charity organization registered in the United States); *United States v. Marzook*, 03-CR-978-All (N.D. Ill. 2003) (Muslims of Palestinian origin charged with RICO conspiracy to provide funding to the Palestinian group Hamas and

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<sup>1</sup> Webster's Dictionary defines the Middle East as "the countries of SW Asia and N Africa – usually considered as including the countries extending from Libya on the W to Afghanistan on the E." Merriam-Webster Online Dictionary, available online at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=Middle+East&x=21&y=17>.

material support to Hamas); *United States v. Al-Hussayen*, 03-CR-48 (D. Idaho 2003) (Saudi Arabian Muslim student with providing material support to terrorists, including, *inter alia*, the Palestinian group Hamas, an FTO, in violation of Section 2339A, via his otherwise lawful activities of maintaining an Islamic website while in the United States); *United States v. Rahmani*, 209 F. Supp.2d 1045 (C.D. Cal. 2002) (Muslims of Iranian origin charged with multiple counts of materially supporting an FTO through “solicitations, wire transfers and monetary donations” to a charity allegedly affiliated with an FTO).

Currently, there is more than enough evidence to suggest that other, non-Middle Eastern Muslim FTOs and terrorist groups are conducting the same type of alleged fund raising and advocacy activities within the United States, but whose alleged members have not been subjected to prosecution on criminal charges, in marked contrast to the Defendants in this action. Specifically, there is substantial documentary evidence to indicate that certain banned terrorist groups are operating within the United States without being subject to any level of criminal prosecution. In this regard, the members of these groups are similarly situated to the Defendants in this action in all respects.

### **1. Kach and Kahane Chai (Israeli FTOs)**

On December 19, 2000, the New York Times published an article on the fund raising and advocacy activities of Kach and Kahane Chai,<sup>2</sup> two Israeli groups also designated as

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<sup>2</sup> Kach and Kahane Chai were first designated as terrorist groups by Executive Order 12947 on January 23, 1995. Executive Order: Prohibiting Transactions With Terrorists Who

FTOs, through various fronts. Dean E. Murphy, *Terror Label No Hindrance to Anti-Arab Jewish Group*, N.Y. TIMES, Dec. 19, 2000, at A1 (Attached as Appendix A). The leader of one of the front groups, Michael Guzofsky, stated from his office at the Hatikva Jewish Identity Center in Brooklyn, “If we can’t be Kach or Kahane Chai we will be simply Kahane,” adding that “[w]e operate openly and have nothing to hide. Ultimately, various organizations that did the same thing were put on the terrorist list, but people that believe in something generally don’t run away even if it becomes dangerous to speak.” *Id.* Further, the article detailed how the banned groups continued their work by operating as a charitable organization, which reported \$107,000 of income to the IRS in 1998, and by openly soliciting potential supporters in the United States for financial aid. *Id.* The article noted that, in order to keep ahead of law enforcement agencies, “the Kahane faithful just put on a new face and find a new name,” adding that law enforcement agencies rarely bother them and generally ignore their activities. *Id.* Michael Guzofsky is similarly situated to the defendants in this case, given that he is alleged to have raised funds for a banned FTO.

A subsequent article in the New York Times reported that on January 4, 2001, the FBI raided the offices of the Hatikva Jewish Identity Center and confiscated large numbers of documents along with several computers. Dean E. Murphy, *F.B.I Raids Brooklyn Office of Kahane Followers*, N.Y. TIMES, January 5, 2001, at B3 (Attached as Appendix B).

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Threaten to Disrupt the Middle East Peace Process, 60 Fed. Reg. 5079, 5081 (January 23, 1995). They were designated as FTOs by the Secretary of State on October 8, 1997, the same date the PIJ was so designated. Designation of Foreign Terrorist Organizations; Notice, 62 Fed. Reg. 52, 649-52 (Dep’t State Oct. 8, 1997).

Incidentally, Guzofsky objected to the raid as an attack on the free-speech rights of individuals spreading their own message - ridding Israel of all Arabs - in a nonviolent manner. *Id.* To further underscore the government's knowledge of Kach and Kahane Chai's activities in the United States, the State Department in its annual report on worldwide terrorist activity notes that the groups "receive[] support from sympathizers in the United States and Europe." *See* DEPARTMENT OF STATE, PATTERNS OF GLOBAL TERRORISM 2003, 125 (April 2004). Despite the fact that the government quite clearly has information on the fund raising and advocacy activities of front groups for Kach and Kahane Chai, and fund raising and advocacy are at the heart of the government's charges against the Defendants here, it has failed to bring any criminal prosecutions based on providing material support for this non-Middle Eastern Muslim FTO through fund raising.<sup>3</sup>

Kach and Kahane Chai continue to raise funds in the United States via the the use of front groups. On August 25, 2004, the New York Daily News reported that David Haivri, "cited by Israel as one of the Kahane movement's central figures," recently accumulated \$100,000 on a fund-raising tour of the United States under the guise of a previously unheard

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<sup>3</sup> Proof of this double standard is evidenced by the government's treatment of Kach and Kahane Chai leaders. On January 12, 2001, the Jerusalem Post reported that the United States had decided to revoke the multiple-entry visa it had issued to Baruch Marzel, the former leader of Kach, a few weeks after he had returned to Israel from a fund raising tour of the United States. Herb Keinon, *Marzel Stripped of American Visa*, JERUSALEM POST, Jan. 12, 2001, at 2A (Attached as Appendix I). Notably, the government did not try to detain Marzel or prosecute him criminally even though he had been in the United States openly. The article quoted an anonymous source familiar with Marzel's case as saying: "The US has been criticized on only coming down on Arab terror; this shows they come down on Jewish terror as well...It is all part of trying to show balance." *Id.*

of front group. Larry Cohler-Esses, *Radical Jewish Groups Raise Funds*, N.Y. DAILY NEWS, August 25, 2004, at 31 (Attached as Appendix C). Further, a banned Kach and Kahane Chai front group called “Gedud Haivri” (also known as the Jewish Legion), collects donations from an address and telephone number in Brooklyn, New York. *Id.* As recently as January 3, 2003, Michael Guzofsky was acting as the main contact for the Jewish Legion in its attempts to recruit Americans to act as security guards at West Bank settlements. Corky Siemaszko, *Brooklyn Group Recruiting Guards for West Bank*, N.Y. DAILY NEWS, January 3, 2003, at 30 (Attached as Appendix D). Currently, Americans can donate to Gedud Haivri through an organization called A.I.S.H., which pledges to send all money donated directly to Gedud Haivri in Israel. The A.I.S.H. website offers a mailing address in Norfolk, Virginia, and any monies it sends to Gedud Haivri are administered by an individual named Ed Banyei. See <http://joelorr.home.mindspring.com/id31.htm>.

There are in fact similarly situated individuals to the Defendants, such as leaders of banned FTOs like Michael Guzofsky and individuals working to raise funds like Ed Banyei, all of whom are actively involved in soliciting funds on behalf of banned FTOs. Despite the fact that there have been numerous reports about the activities of Kach and Kahane Chai front groups raising funds in the United States for several years, the government has yet to move to indict these individuals for providing material support to these banned groups. While the United States may have the right to prioritize its prosecutions with respect to individuals providing material support to banned FTOs, it should be noted that Kach and Kahane Chai are violent groups responsible for numerous murders and attacks on

Palestinians, most notably the murder of 29 Palestinian worshipers at the Ibrahimi Mosque in Hebron, the West Bank on February 25, 1994. Currently, the Israeli government fears that any further attacks by Kach or Kahane Chai advocates might engulf the region in even more desperate chaos. Zev Chafets, *Under Fire - A New Breed of Jewish Militants Threatens Sharon's Life - and Israel's Stability*, September 19, 2004, N.Y. DAILY NEWS, at 39 (Attached as Appendix E).

## **2. Real IRA (Irish FTO)**

Kach and Kahane Chai are not the only non-Middle Eastern Muslim FTOs with members conducting fund raising activities in the United States. The British press has published several articles detailing the fund raising activities of the Real IRA,<sup>4</sup> a banned FTO, in the United States. For example, in June 2001, the Financial Times published an article reporting on the intention of those within the Irish-American community to continue to raise funds for the Real IRA, despite the ban. *Special Report The Funding of Irish Nationalism*, FINANCIAL TIMES (London), June 5, 2001, at 3 (Attached as Appendix F). On December 30, 2001, the Express on Sunday reported that several Irish bars across the United States “have continued to hold fund raising activities for the Real IRA.” Yvonne Ridley, *Outrage As US Cash Still Flows To the IRA*, EXPRESS ON SUNDAY (London), Dec. 30, 2001

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<sup>4</sup> The Real IRA broke off from the mainstream IRA (Provisional IRA) due to differences over the direction of the peace process in Northern Ireland. PATTERNS OF GLOBAL TERRORISM, *supra* p. 7, at 133. The Real IRA was designated as an FTO by the Secretary of State on May 16, 2001. Designation of Foreign Terrorist Organizations; Notice, 66 Fed. Reg. 27,441-42 (Dep’t State May 16, 2001).

(Attached as Appendix G). A source from the Real IRA stated that “[i]t’s true that much of our funding comes from Irish Americans.” *Id.* Joe Dillon, a spokesman for the 32 County Sovereignty Committee, a front organization for the Real IRA,<sup>5</sup> echoed the sentiment and reaffirmed that Irish Americans continue to provide the largest amount of financial support to the Real IRA. *Id.*

On January 6, 2002, the Express on Sunday reported that the United States government moved to freeze the assets of the Real IRA, in response to the paper’s exposé of the group’s fund raising activities in the United States, but has not prosecuted anyone criminally. Yvonne Ridley, *Freeze On US Funds For Terror Groups*, EXPRESS ON SUNDAY (London), Jan. 6, 2002 (Attached as Appendix H). In addition to the above cited reports in the British press, the State Department, in its report on Patterns of Global Terrorism 2003 states that the Real IRA is “[s]uspected of receiving funds from sympathizers in the United States and of attempting to buy weapons from US gun dealers.” PATTERNS OF GLOBAL TERRORISM, *supra* p. 7, at 133.

The above evidence is sufficient to demonstrate both the discriminatory effect and purpose of this prosecution on the Defendants, all of whom are Muslims of Middle Eastern origin, as opposed to Jewish Americans, in the case of Kach and Kahane Chai, or Irish Americans, in the case of the Real IRA. Members of Kach, Kahane Chai, and the Real IRA are, without doubt, similarly situated to any alleged members of the PIJ. Further, as noted

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<sup>5</sup> See footnote 8, *supra*; see also *32 County Sovereignty Committee v. Department of State*, 292 F.3d 797 (D.C. Cir. 2002) (upholding the designation of the Real IRA as an FTO).

above, the previous prosecutions that involved charges of material support to terrorists based on otherwise legal advocacy and fund raising have targeted only Muslims of Middle Eastern descent. On this basis, it is clear that Mr. Fariz has clearly demonstrated the discriminatory effect of this prosecution. The fact of this discriminatory effect alone, when compared and contrasted with the other prosecutions involving violations of Section 2339B, also demonstrates the discriminatory purpose behind such prosecutions. The fact that American Jews and Irish Americans have been engaged in exactly the same activity charged here, but have managed to avoid prosecution is sufficient to make out a successful selective prosecution claim.

As the Supreme Court has noted, discriminatory effect can be so severe as to provide sufficient evidence of discriminatory purpose. *Gomillion v. Lightfoot*, 364 U.S. 339, 341-42 (1960) (where act of municipal legislature removed all but a handful of the town's black voters, the act could only be constitutionally invalid, since it resulted in a de facto segregation between the town's white and black citizens). Further, "[c]ircumstantial evidence of invidious intent may include proof of disproportionate impact." *Batson v. Kentucky*, 476 U.S. 79, 93 (1986) (internal citations omitted). "[U]nder some circumstances proof of discriminatory impact 'may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on non-racial grounds.'" *Id.* (quoting *Washington v. Davis*, 429 U.S. 229, 242 (1976)). The disparate application of prosecutions involving alleged Section 2339B violations is "directed so exclusively against a particular class of persons...with a mind so

unequal and oppressive” that enforcement has amounted to a “practical denial” of equal protection of the laws. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886).

**B. Discrimination in the Designation Process**

In addition, the instant case highlights the extremely selective nature of the prosecution of the Defendants, in the context of a highly arbitrary definition of what constitutes “terrorism” and “material support,” while other groups that admittedly engaged in terrorist activity continue to operate freely in the United States. This state of affairs serves only to underscore the discriminatory purpose of this prosecution, which seeks to punish Muslims of Middle Eastern origin, while other organizations of different religious and ethnic backgrounds carry out fund raising and advocacy activity in the United States without fear of legal sanction, simply because they have not been designated as FTOs. They can operate freely in the United States, even though they engage in the same type of political violence that has seen other groups banned in the United States as FTOs.

This discrimination is rooted in the FTO designation process, where the Executive Branch, specifically the Secretary of State in consultation with the Attorney General, can designate a group if it has ever used or threatened to use a weapon against persons or property, or has engaged in politically motivated violence, and if the group’s activities are against U.S. foreign policy, defense, or economic interests. 8 U.S.C. § 1189(a)(1)(C); David Cole, “The New McCarthyism: Repeating History in the War on Terrorism,” 38 Harv. C.R.-C.L. L. Rev 1, 10 (Winter 2003). In essence, the Executive Branch’s designation singles out those groups whose viewpoints run counter to the interests of the United States. Of the 37

groups designated as FTOs, 24 or 65% are Muslim in character and/or makeup. PATTERNS OF GLOBAL TERRORISM, *supra* p. 7, at 113-37. Of those 24, 9 are either Palestinian or Lebanese groups opposed to Israel and its policies regarding the Palestinians. *Id.* As several congressmen noted when they voiced their concerns about the then-pending Section 2339B legislation:

Given the bill's broad definition of "terrorism," as a practical matter this will give the Secretary of State completely open-ended authority to determine which organizations to blacklist. This could very well lead to the law being applied in a selective manner, raising serious due process issues (as President [G.H.W.] Bush once stated, "one man's terrorist is another man's freedom fighter").

H.R. REP. NO. 104-383, dissenting view pt. I(A), at 179-80 (1995) (footnotes and citations omitted).<sup>6</sup>

By way of example of the double standards of the policy of designations, on March 21, 2004, the New York Times Magazine printed a long profile of an individual named Yasith Chhun, an accountant in Long Beach, California, who also serves as the leader of the Cambodian Freedom Fighters ("C.F.F."), "a militant group dedicated to the overthrow of Prime Minister Hun Sen of Cambodia." Joshua Kurlantzick, *The Strip Mall Revolutionaries*, N.Y. TIMES MAG., Mar. 21, 2004, at 50 (Attached as Appendix J). While the C.F.F. has not been designated as an FTO, it is listed as a "terrorist group" by the Department of State in its report on Patterns of Global Terrorism 2003. PATTERNS OF GLOBAL TERRORISM, *supra*

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<sup>6</sup>It should be noted that this motion does not serve as a challenge to the designation of the PIJ as an FTO, but rather highlights the disproportionate focus on Muslim groups generally, and groups in conflict with Israel specifically.

p. 7, at 142-43. The Report notes that the C.F.F.'s "US-based leadership collects funds from the Cambodian-American community." *Id.* By hosting various fund raising events in the Cambodian-American community, Chhun claimed to have amassed some \$300,000 on behalf of the C.F.F. Kurlantzick, *supra*. The article notes: "The group spent two years methodically planning a coup that culminated in an armed assault on Phnom Penh in the fall of 2000, resulting in some of the worst bloodshed in the Cambodian capital's recent history. Now, Chhun said, the group is planning an even bigger assault. 'Next time,' he promised, 'we will attack the whole country.'" *Id.* While the FBI has opened an investigation into the C.F.F. and its activities, the article details how strong support for the C.F.F. from members of Congress has impeded any attempts by the government to investigate it and curtail its activities. *Id.* In fact, Chhun is quoted as telling the FBI that his group has no plans to quit raising money for and planning violent activity in Cambodia, a country with which the United States is not at war. *Id.* While the C.F.F. is perhaps not eligible for FTO status, it is arguably more dangerous to plan violent assaults on foreign governments from the United States than to raise funds for charities the government alleges are related to terrorist groups, as is the case with Mr. Fariz. Such action is also almost certainly illegal and a violation of the Neutrality Act, 18 U.S.C. § 960. *See United States v. Khan*, 309 F. Supp.2d 789, 818 (E.D. Va. 2004) (the essential elements of a Neutrality Act violation are "1) a military expedition organized in this country; 2) against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace;

and 3) defendant provided means for the expedition in this district, with knowledge of its character”).

Another group that continues to raise funds here in the United States is the Irish Republican Army, also known more generally as the IRA. Like the C.F.F., the IRA has been listed in the State Department’s Report, *Patterns of Global Terrorism 2003* as a “terrorist group.” *PATTERNS OF GLOBAL TERRORISM, supra* p. 7, at 148. The same report notes that the IRA “[i]s suspected of receiving funds, arms, and other terrorist-related materiel from sympathizers in the United States.” *Id.* In December 2001, the St. Petersburg Times reported that Sinn Fein, the political wing of the IRA, “relies heavily on support in the United States...for fund raising.” (Attached as Appendix K). Political pressure from Irish Americans has ensured that the IRA has escaped the scrutiny of federal law enforcement agencies, even though its military activities have been branded as the same kind of “terrorism” in which the PIJ is allegedly engaged. *Special Report the Funding of Irish Nationalism, supra* p. 8. Also, the United States ban on the Real IRA has allowed IRA support groups in the United States to increase the level and breadth of their fund raising. *Id.* Based on the above discussion of the government’s failure to prosecute non-Muslim members of groups branded as FTOs, in addition to its failure to even articulate or apply a consistent standard towards groups involved in essentially the same type of activities, Mr. Fariz has demonstrated that this prosecution is motivated by an impermissible discriminatory purpose. Accordingly, this Court should dismiss this case on the basis of selective prosecution.

**C. Discovery is Warranted in this Case Based on Selective Prosecution**

Even if this Court does not dismiss this action on the basis of selective prosecution, at the very least, Mr. Fariz is entitled to discovery from the government. The standard for obtaining discovery based on a selective prosecution claim is less exacting than that for dismissal. Mr. Fariz need only show “some” evidence of discriminatory effect and purpose to obtain discovery on this claim. *United States v. Bass*, 536 U.S. 862, 863 (2002). While the Supreme Court has not answered the question of what type of showing as to discriminatory purpose is necessary to obtain discovery on a selective prosecution claim, it has stated that a defendant seeking discovery on that basis can show discriminatory effect by “some evidence that similarly situated defendants of other races could have been prosecuted, but were not.” *Armstrong*, 517 U.S. at 469. In the Eleventh Circuit, to be entitled to discovery on a selective prosecution claim, Mr. Fariz must present sufficient evidence as to discriminatory effect and purpose to make out a “colorable entitlement” to the claim. *United States v. Gordon*, 817 F.2d 1538, 1539 (11<sup>th</sup> Cir. 1988), *vacated and remanded on other grounds*, 836 F.2d 1312 (11<sup>th</sup> Cir. 1988). “Colorable entitlement” has been defined as “sufficient facts ‘to take the question past the frivolous state and raise a reasonable doubt as to the prosecutor’s purpose.’” *Id.* (quoting *United States v. Hazel*, 696 F.2d 473, 475 (6<sup>th</sup> Cir. 1983) (internal citations omitted). The above examples clearly demonstrate Mr. Fariz’ colorable entitlement to the selective prosecution claim, namely, that similarly situated individuals could have been prosecuted but have not been. With respect to the issue of discriminatory purpose, the fact that only alleged members of Muslim Middle Eastern groups

have been singled out for prosecution, while Jewish, Irish and Cambodian Americans have engaged in essentially the same activities without the threat of criminal prosecution, only serves to highlight the fact that a discriminatory purpose is at work here. While Mr. Fariz is not in a position to offer information gleaned during the course of a criminal investigation, since he does not have access to such resources, there is overwhelming evidence in the public record of banned FTOs operating in the United States in a manner highly detrimental to U.S. interests. At a minimum, Mr. Fariz is entitled to review discovery in the government's files related to decisions of whether or not to prosecute individuals in the United States active in raising funds for banned FTOs.

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### **III. Conclusion**

For the foregoing reasons, Mr. Fariz respectfully requests that this Honorable Court dismiss this action based on the selective nature of the prosecution and/or grant discovery to allow further investigation of the selective prosecution claim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of October, 2004, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said  
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